Minutes of a regular meeting of the Zoning Board of Appeals of the Village of Irvington, held in the Board of Trustees Hearing Room on October 24, 1995

MEMBERS PRESENT:	Louis C. Lustenberger, Jr., Chairman Robert Myers Robert Bronnes Bruce Clark Lewis Herman
ALTERNATE MEMBERS PRESENT:	George Rowe
VILLAGE OFFICIALS PRESENT:	Eugene Hughey, Building Inspector

The meeting was called to order by the Chairman at 8:00 p.m. A motion was made to accept the Minutes of the September 19, 1995 meeting. The motion was unanimously carried.

The first matter to be called was the application of Howard Padwee. Bruce Clark recused himself.

The Board Members hearing the application were:

Robert Myers
Louis C. Lustenberger, Jr.
Robert Bronnes
Lewis Herman
George Rowe

The Chairman stated that he would accept any additional argument from counsel and would then hear any comments from the audience.

The Chairman advised counsel for the applicant and the objectant to proceed with the understanding that the Board Members have read the briefs and are familiar with the record. The Chairman indicated that he would like to dispose of this matter without any further adjournments.

John Spellman appeared for the applicant. He submitted the affidavit of mailing. He stated that the Village must adhere to the municipal home rule law in order to supersede a state statute. Any supersession intended by a village could not occur to a law that did not exist. Village Law Section 7-712, etc. was passed after the Irvington Village ordinance governing zoning and therefore could not have been intended to supersede the passage of Sections 7-712 which occurred subsequent to the passing of the Irvington Zoning Ordinance.

Mr. Spellman stated that the questions of practical difficulty were resolved by the recent Court of Appeals decision in the Saso case. Mr. Spellman stated that the expenditures made by Dr. Padwee were in excess of $2,000,000. He states that Lot 5, at the time of its sale, had a value of $1.4 million and Lot 2 was sold for $375,000. There was an additional $300,000 spent for improvements. Therefore, in his opinion, Dr. Padwee donated more than $2,000,000 toward the subdivision.

Mr. Spellman stated that every property owner is entitled to a reasonable return on his investment.

Mr. Spellman stated that Dr. Padwee did not create a substandard lot. It was a valid building lot for a period of time after passage of the local law upzoning the area in question. Mr. Spellman stated that an owner could not lose his right to use his property in the manner he deems proper when the lot was created prior to a change in the zoning law. The Village allowed Lot No. 2 to be used as a buildable lot. This would make Lot No. 1 subject to being held in single and separate ownership and therefore a valid building lot.

Edwin Lieberman appeared by the objectants. He handed up a letter and a chart prepared by Barbara Fragamen.

Mr. Lieberman stated that if Dr. Padwee is entitled to use Lot 1 as of right because of the doctrine of single and separate ownership, his proper relief is to proceed under Article 78 in the Supreme Court for Mandamus rather than to request a variance.

Mr. Lieberman stated that self created hardship is a factor which must be considered, even if it is not necessarily dispositive.

If we accept Padwee's argument that he sold Lot 2 leaving Lot 1 which, because of single and separate ownership, can be used as a building lot, a developer can create similar situations by selling off every other lot in the subdivision to create a vested right under single and separate ownership.

He stated that Dr. Padwee's problems were self-created because he sold Lot 2 leaving Lot 1 and knowing that he could lose his vested right to building on Lot 1 within a specified period of time.

He stated that there was no proof that Dr. Padwee had ever received a $1.7 offer for the property prior to subdivision.

Mr. Lieberman stated that the test to be applied is not the value of the property with a variance but the value of the property as it is presently zoned. It was Mr. Lieberman's contention that Dr. Padwee was seeking a windfall.

Mr Lieberman stated that adoption of up zoning creates a merger which defeats single and separate ownership.

The Chairman asked for clarification on the question of whether the nine lots which were discussed at the September meeting which were less than one acre were lots which were part of the Padwee subdivision. The Chairman was advised that they were not. There were nine lots not connected with the Padwee subdivision.

The Chairman stated that the Board has to address technicalities but, because it is a zoning board, wants to look at general issues in addition to the legal issues.

He raised the question of whether single and separate ownership exists and, if so, does this limit the Board's discretion.

The Zoning Board of Appeals does have power to interpret the Zoning Ordinance of Irvington as well as the Village Law and, there is no need to require Dr. Padwee to request Article 78 relief in the Supreme Court.

The next question is whether the variance should be granted if there was no single and separate ownership. The Chair stated that many of the issues before the Board were addressed at the time of Dr. Padwee's application.

The Chairman stated that he considers the entire record from the prior proceedings to be included in the present record.

If there is single and separate ownership the Zoning Board of Appeals has the power to interpret an ordinance as opposed to acting solely to grant or deny a variance.

The Chairman stated that he was willing to proceed even though there was no request for an interpretation and merely a request for a variance.

The Chairman stated that he does not read Section 7-708 in the same manner as Mr. Spellman. Section 7-708 does not address the question of single and separate ownership. It is a narrow statement of the law and stays the effective date of up zoning. It does not address single and separate ownership.

The Chairman concluded that Dr. Padwee owned Lot 1 and 2 when the up zoning was passed and therefore there was no single and separate ownership.

The Chair was of the opinion that the problems were self created because Dr. Padwee had the power to build and sell within the three year period set forth in Section 7-708.

He did not address the question of whether the hardship was self-created because it is determinative of the issue. He believes that the Village law supersedes the zoning ordinance on the question of self-created hardship. The Chairman stated that he believed that the variance requested was substantial and that any economic injury to Dr. Padwee does not outweigh the damage to the neighbors and the neighborhoods.

The Chairman stated that he accepted Mr. Lieberman's opinion concerning return of investment.

The Chair moved to deny the application. The motion was carried by a vote of 4 to 1. Lewis Herman voted to grant the application for the reasons which are stated on the record being prepared by the court reporter.

The next application was the application of Mr. & Mrs. W. J. Adelson.

The Board Members hearing the application were:

Bruce Clark
Robert Myers
Lewis Herman
Robert Bronnes
George Rowe

Chairman Lustenberger recused himself because he resides on Fargo Lane and the request for a variance relates to a residence being constructed on Fargo Lane.

Bruce Clark was appointed acting Chairman for this application.

Mr & Mrs. Adelson and Dean Telfer, their architect, appeared on behalf of the application.

Mr. Telfer stated that the sprinkler system was not needed because they were constructing a grade 1 fireproof structure. Mr. Adelson is an art dealer and is worried that a sprinkler system could cause irreparable damage to the works of art he has in his possession for his business as well as the works of art he collects. The drawings being submitted show that this is a grade 1 fireproof structure.

Bruce Clark stated that he viewed the property. The applicant stated that he would have to go before the Architectural Review Board to get approval if the Zoning Board granted the variance. No one in the audience wished to speak on the subject.

Mr. Clark stated that he was inclined to accept the request for a variance to permit the basement to be discounted in assessing the total height of the building but not with regard to the question relating to the sprinkler system. He has viewed the property and

believes that it is a unique piece of property and that the house will be sufficiently hidden so that there would be no intrusion on the neighbors.

Mr. Clark stated that Mr. Hughey has advised that the sprinkler law has been in existence for 4 years. Mr. Hughey stated that in that time one application for a variance from the sprinkler law was requested. This was presented to the Board of Trustees and it was granted. Mr. Hughey stated that every house and every addition to every existing dwelling in excess of 30 percent in the last four years was required to and did install a sprinkler system.

Mr. Hughey stated that this, based upon his review of the drawings, is a Class 1 fireproof building with the possible exception of the roof. The house is 90 percent fireproof. Mr. Hughey stated he would need to get some clarification from the "code people" concerning the 10 percent of the house which was not fireproof.

The applicant offered to include a fire alarm system. Mr. Adelman stated that he deals in 19th Century paintings and activation of the sprinkler system could cause serious damage to his collection and his art work which he intends to sell.

Mr. Telfer stated that he was the architect for the Avery Library at Columbia University which houses the greatest collection of books on architecture. The Avery Library does not include a sprinkler system. He stated that they had to apply to the Code Bureau and obtain a variance because no sprinkler manufacturer would guarantee that its system would not go off inadvertently.

Mr. Clark stated that he was willing to grant the variance and allow construction to be commenced provided the applicants were willing to accept any changes recommended by Mr. Hughey concerning the need for a sprinkler system.

Mr. Clark made a motion to grant the variance except for the application relating to the sprinkler system which would await the further opinion of Mr. Hughey and an opinion from the Code Bureau. The motion was carried unanimously.

The matter would be further adjourned until November 21st to determine if the question of the sprinkler system was resolved.

The next application was the application of Mr. Zayas. Mr. Bronnes recused himself. The Board Members constituting the panel are as follows:

Bruce Clark
Robert Myers
Louis C. Lustenberger
Lewis Herman
George Rowe

The house is on North Dutcher Street. Mr. Hughey stated that the deck is five feet from the property line on the side. In order to place the deck completely behind the house, the deck has to be placed within five feet of the property line because the house is within five feet of the property line. The deck and the fence would be on the north side of the property. Proof of mailing was given to the Chairman. William Holman, whose father owns the house on the north side, asked for certain clarification. The fence will be six feet above the deck. The top two feet of the fence will be lattice work and solid below. The porch on the Holman property is higher than the proposed deck.

Mr. Holman wanted to know what would happen if the owner wanted to enclose the deck and make an additional room. Mr. Hughey stated that he would consider this an increase in non-conformity and deny a permit.

The motion was made to grant a variance and the motion was unanimously carried.

The next application was Linda and Evan Smith. The members of the Board hearing this application are as follows:

Bruce Clark
Robert Myers
Louis C. Lustenberger
Robert Bronnes
Lewis Herman

The Smiths were seeking a variance from a finding of the Planning Board of a zero capacity. Walter Zulkowski, Esq. of 50 Main Street, White Plains, appeared on behalf of the applicants along with Mr. Smith. He stated that the property is 8,900 sq. feet. the present zoning laws require 10,000 sq. feet to be a buildable lot. In addition, the slopes decrease the useable square footage to 4,400 sq. feet based upon the application of the Planning Board formula. The Planning Board has no discretion in applying the formula and must do so according to law.

Mr Smith stated that there was an intent to build a one family house. The houses in the area are built on similar lots. Mr. Smith stated that his family purchased three lots on Riverview Terrace and one lot on Cedar Lawn Road in 1954. In the 1960s his family bought a second lot on Cedar Lawn Road, The purpose of purchasing the second lot was to obtain a buildable lot on Cedar Lawn Road because he would need two lots to have one building lot under the law as it existed at that time.

Mr Zulkowski cited The Morin decision, 163 A.D.2d 389 as binding on'the Zoning Board of Appeals.

It was reported that, at the present time, there is a house on Lot 6, 7 and 8 on Riverview Terrace. The house is on Lot 6 and 7. there is no house on Lot 8. Lot 8 is 2,500 sq. feet and no house could be constructed on it.

Lots 6, 7 and 8 are owned by Mrs. Smith.

Lot 16 and 17 on Cedar Lawn Road are owned jointly by Mr. & Mrs. Smith.

The Chairman stated that the Board had not had an opportunity to view the property and he was of the opinion that viewing the property was a necessity. The Chairman mentioned that even if the formula applied by the Zoning Board were not taken into account, the lot would still be non-conforming by 160 feet.

Mr. Chattey stated that he owned the property to the west. The lot under discussion has slopes of 25 degrees or more over 19 percent of the property and slopes in the range of 15 to 25 percent over the additional 36 percent of the property.

Mr. Chattey states that his property does not slope in the same manner as the lots owned by the applicants.

Mr. Hodling stated that he owns the lot north of the property. The lot is neglected and he believes that construction will improve the neighborhood.

The Chairman suggested that an adjournment to November 21st be granted in order to allow the members of the Zoning Board to view the premises.

The next application was that of Larry Smith. The members of the Zoning Board hearing the application were as follows:

Bruce Clark
Robert Myers
Louis C. Lustenberger
Robert Bronnes
Lewis Herman

Robert Reilly appeared on behalf of the applicants. The premises is on 12 South Ferris Street. It is immediately south of the gas station. The lot is 50 feet by 100 feet. It is in essence two building lots and bigger than most of the buildings adjoining it on South Ferris Street. The applicants are seeking to create an addition to the north side of the building which would go out over the present driveway. They would add a living room, a bedroom and a porch. They would be removing one of the two accessory buildings on the back of the property and renovating the second accessory building.

The present house is within 30 feet of the property line. All of the houses in the area violate the set back restrictions as they presently exist.

Carl Hemrington and Earl Ferguson who are adjoining neighbors support the application because, in their opinion, it would improve the area and the neighborhood. The house would be constructed to resemble the other immediately adjoining houses on Ferris Street.

Dr. Walker, the contract/vendee, stated that he would restore the house so that it would be similar in appearance to that of his immediate neighbors.

The Chairman moved to grant the application. The motion was unanimously carried.

The Chairman moved at 10:20 p.m., to adjourn the meeting to November 21, 1995. The motion was unanimously carried.

Respectfully submitted,

Lewis Herman, Secretary
Zoning Board of Appeals